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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-13029-smb

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5 In the Matter of:

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7 AAGS HOLDINGS LLC,

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9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 November 14, 2019

17 10:20 AM

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21 B E F O R E :

22 HON STUART M. BERNSTEIN

23 U.S. BANKRUPTCY JUDGE

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25 ECRO: TL

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1 HEARING re Motion for Order Approving Disclosure Statement
2 and Confirming Debtor's Plan of Reorganization

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4 HEARING re Case Conference

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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16 BY: PAUL RUBIN

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1 P R O C E E D I N G S

2 THE COURT: AAGS.

3 MR. RINGEL: Good morning, Your Honor.

4 THE COURT: Good morning. Go ahead.

5 MR. RINGEL: Your Honor, let me bring you up to
6 date from where we were when we were last here. We filed an
7 amended plan and disclosure statement, followed by a second
8 amended, which is the document that we are going forward on,
9 which includes all the comments from our lender. And what
10 we have is, we've developed and I can hand it up or we can
11 put it on through a witness, a sources and uses for the plan
12 and disclosure statement. One was attached to the
13 disclosure statement as an exhibit.

14 After we filed that we received the claim that was
15 filed by QPS, which was for about \$300,000 more than what we
16 had estimated in our sources and uses. So we did a second
17 one, which Your Honor does not have yet, which reflects the
18 QPS claim at 659,774 which is what it was filed at.

19 The amount of money that has been sent to us and
20 deposited in our escrow account is actually \$122,000 more
21 than the 34,537,000.

22 THE COURT: There were two sources of the escrow,
23 as I recall, the exit financing and the principal also put
24 up?

25 MR. RINGEL: There are -- actually are three

1 sources. There were wires from the existing members,
2 totaling \$2,537,786. There's another wire from Churchill,
3 who is acquiring a 50 percent membership interest,
4 subsequent to closing, for 250,000. And then there are the
5 proceeds of the loan. And let me just explain, Your Honor,
6 that was net funded. So they funded 25,535,416.67, and when
7 I say net funded, they are also giving us credit for the
8 origination fee of 595,000 --

9 THE COURT: How much cash do you have?

10 MR. RINGEL: The cash that we have is 30 -- hold
11 on.

12 THE COURT: This is in your escrow account?

13 MR. RINGEL: It is in our escrow account, with one
14 exception. One wire has been sent and I'm waiting for the
15 confirm, Your Honor. But the monies from the equity
16 holders, the 4,537,786 is in my escrow account, the two
17 wires -- there are two wires that are coming from Churchill,
18 one has been sent and we have a fed reference number for
19 that, and that's for 3,614,938, and the other has been
20 initiated and my office, I'm waiting for the confirmation of
21 it, for 22,170,480.

22 THE COURT: That's the big one, that's the one you
23 need.

24 MR. RINGEL: Yes, but it -- I have the initiation
25 here. It was sent --

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1 THE COURT: All right. Let me ask the question --

2 MR. RINGEL: -- by Citibank. And -- yeah.

3 THE COURT: -- a different way. How much money do
4 you have in your escrow account right now?

5 MR. RINGEL: I have the --

6 THE COURT: Total. Don't give me components.

7 It's money, it's fungible.

8 MR. RINGEL: Yes, I'll give you the total right
9 now, Your Honor. I have, in my account, 8,152,724. And as
10 I said before, Churchill is giving us credits for the
11 origination fee and the --

12 THE COURT: How much is the confirmed wire
13 transfer?

14 MR. RINGEL: That's the number I just gave you,
15 Your Honor, the 8 million -- I'm sorry.

16 THE COURT: I'm asking you a different question.

17 MR. RINGEL: Yes.

18 THE COURT: What do you have in your escrow
19 account right --

20 MR. RINGEL: That's the number I just gave you,
21 the 8 million.

22 THE COURT: Okay. And that includes the confirmed
23 wire transfer?

24 MR. RINGEL: That's the confirmed wire transfers.

25 THE COURT: And the sent, but unconfirmed wire

1 transfer is about 22 million?

2 MR. RINGEL: Twenty-two million one seventy-four
3 eighty. And if we can come -- if you want to do second
4 call, Your Honor, I can probably have it confirmed by then,
5 because it was sent --

6 THE COURT: You're the only case I have left.

7 MR. RINGEL: Okay.

8 THE COURT: You want me to take a recess for five,
9 ten minutes?

10 MR. RINGEL: What time is was it sent?

11 MAN: Yeah, it was sent at 9:00 this morning.

12 MR. RINGEL: It was sent at 9:00 this morning. As
13 soon as I have the said wire number, I can confirm it

14 THE COURT: All right. Why don't we deal with
15 some of the other issues then, if there are any other
16 issues, other than money.

17 MR. RINGEL: Sure, Your Honor. The only issues --
18 well, I don't know if there are other issues, Your Honor.

19 THE COURT: Well, why don't you -- why don't you
20 begin with an offer of proof. Tell me who's going to
21 testify.

22 MR. RINGEL: Yes.

23 THE COURT: I'll ask Mr. Rubin if he accepts the
24 offer of proof or if he wants to cross examine the proffered
25 witness.

1 MR. RINGEL: Yes. The offer of proof, Your Honor,
2 is from David Goldwasser, who is the bankruptcy consultant
3 of the Debtor. Mr. Goldwasser developed the sources and
4 uses that are attached to the disclosure statement, that was
5 one of his responsibilities as the bankruptcy consultant to
6 the Debtor. He's familiar with the funding, the acquisition
7 loan from Churchill. He's familiar with the development
8 that the Debtor is going to engage in, post-confirmation,
9 and the expenses that the Debtor is going to incur
10 subsequent to confirmation

11 He compiled the list of sources which total
12 \$34,415,762, which is set forth in the exhibit to the
13 disclosure statement.

14 THE COURT: But the numbers you gave me only add
15 up to about 30 million and change.

16 MR. RINGEL: And the differential, Your Honor, are
17 the credits that Churchill are giving us for the origination
18 fee of \$595,000 --

19 THE COURT: But --

20 MR. RINGEL: In other words --

21 THE COURT: -- let's stop. You have -- you're
22 going to have \$30 million in cash, you need 27.4 just for
23 the purchase price, right?

24 MR. RINGEL: Yeah. Right.

25 THE COURT: Okay. Then QPS has asserted a claim

1 for about 650 that you're going to reserve for?

2 MR. RINGEL: Yes, Your Honor, 659,774. Yes.

3 THE COURT: Let's say 660. Okay. What other
4 expenses? You have attorney's fees; how much are those
5 going to be?

6 MR. RINGEL: A hundred and fifty thousand.

7 THE COURT: What other --

8 MR. RINGEL: We have other claims, Your Honor,
9 other unsecured claims that are getting paid.

10 THE COURT: Right. How much are those?

11 MR. RINGEL: Those, with a interest component at
12 the federal judgment rate, are 595,680.

13 THE COURT: Five ninety-five?

14 MR. RINGEL: Um hmm.

15 THE COURT: Okay.

16 MR. RINGEL: We have U.S. Trustee fees, based on
17 the purchase price of -- on the disbursements, Your Honor,
18 that we're calculating at about \$34 million, of 250,000, for
19 this quarter. And we have also estimated, in terms of
20 carrying costs going forward of \$275,600. Those are for the
21 carrying costs from the effective date of the plan through
22 the maturity date of the loan, which is one year from the
23 effective date

24 THE COURT: How did you come up with that number?

25 MR. RINGEL: That number consists of the real

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1 property taxes on the property, which I believe were
2 \$255,000 -- 255,600, and an estimate of insurance, based on
3 discussions with the broker, of \$20,000.

4 THE COURT: Okay.

5 MR. RINGEL: There was also an estimate, Your
6 Honor, of pre-development costs for the property of
7 \$500,000.

8 THE COURT: And what is that for, zoning, if
9 necessary and architectural plans and things like that?

10 MR. RINGEL: Yeah, it's architect, engineer, legal
11 fees, and a \$50,000 contingency.

12 THE COURT: What's the contingency?

13 MR. RINGEL: And just --

14 THE COURT: Oh, you -- oh, that's additional
15 money. I understand.

16 MR. RINGEL: In case -- for a contingency, in case
17 it's necessary in terms of the redevelopment clause.

18 THE COURT: Anything else?

19 MR. RINGEL: Yes. In connection with the closing
20 of the loan, we have estimated \$25,000 of legal, \$10,000 for
21 the application fee, processing fee, title costs of two
22 twenty-three one twenty-five, and costs for third party
23 reports, I assume environmental, appraisals and the like of
24 \$12,000.

25 THE COURT: This is for the closing of the

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1 transaction with QPS?

2 MR. RINGEL: With Churchill, yes, Your Honor.

3 THE COURT: Oh, with Churchill.

4 MR. RINGEL: Yeah, that's the closing of the
5 transaction, yes.

6 THE COURT: So -- okay, anything else?

7 MR. RINGEL: That's it, Your Honor.

8 THE COURT: So what do all those numbers you just
9 gave me add up to?

10 MR. RINGEL: All of those numbers add up to
11 \$34,000,415 -- excuse me, \$34,415,762.

12 THE COURT: Okay. So how do you make the
13 approximate 4 million, between what you just told me and the
14 30 million that you expect to have?

15 MR. RINGEL: The \$595,000 origination fee for
16 Churchill, and the interest reserve, which was \$3,619,000 --

17 THE COURT: That's not in your numbers here.

18 MR. RINGEL: Oh, I'm sorry, Your Honor, then I
19 mistakenly skipped it. That is part of the 34,415,762.

20 THE COURT: Okay. So that's it -- the interest
21 reserve is 3 million?

22 MR. RINGEL: Three million six hundred and
23 nineteen thousand five hundred and eighty-three dollars and
24 thirty-three cents. That's part of the \$34 million figure -
25 - 34,415,782.

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1 THE COURT: And are these the costs that Churchill
2 is -- what are they doing?

3 MR. RINGEL: The cost of the Churchill loan.

4 Remember we -- I don't know if you remember, we talked about
5 it last time, one of the questions was where is the money
6 coming for the interest reserve one year, that's the 3.6
7 million. We also had to pay an origination fee.

8 THE COURT: I guess what I'm not understanding is
9 now you've given me -- are you saying that these aren't
10 debts the Debtor will have to -- expenses the Debtor will
11 have to pay?

12 MR. RINGEL: Yes. And the sources that we have --

13 THE COURT: Do you have the updated sources and
14 uses for everybody?

15 MR. RINGEL: Yes. May I, Your Honor?

16 THE COURT: Maybe -- yeah, do you have one for
17 counsel?

18 MR. RINGEL: Yes, I do.

19 THE COURT: Should have done this first.

20 (Counsel confer.)

21 THE COURT: What's this \$4,400,000 equity
22 contribution?

23 MR. RINGEL: That -- those are the first two
24 numbers I gave you, Your Honor, that I have -- that are in
25 my account. I said they were 4 million-actually-537,786

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1 that I've received from equity. It's a little bit more.
2 There's actually a \$122,000 more than we need in my escrow
3 account.

4 THE COURT: The loan is for how much, \$29,750,000
5 but you only have a transfer coming in of 22 million from
6 Churchill.

7 MR. RINGEL: No, 22 million was one transfer, and
8 the second transfer was 3,614,938, Your Honor. If I can
9 hand up a copy --

10 THE COURT: But that's less than 29 -- I'm just
11 not following these numbers

12 MR. RINGEL: No, no, no. Your Honor, there were
13 two transfers from Churchill.

14 THE COURT: What's the aggregate of the Churchill
15 transfers? Let's assume --

16 MR. RINGEL: The aggregate -- Your Honor, the
17 aggregate of the transfers are 25,535,416. If I can hand up
18 a calculation, Your Honor, it will make it much easier for
19 you to follow.

20 THE COURT: Fine. Because it's not easy now, I
21 got tell you.

22 MR. RINGEL: Okay. I'll give them to counsel,
23 too.

24 THE COURT: Okay.

25 (Counsel confer.)

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1 THE COURT: I guess what I don't understand is you
2 have, I guess as a source, the credits that Churchill is
3 giving in the approximate sum of \$4.2 million. How is that
4 a source?

5 MR. RINGEL: Well, Your Honor, we're -- those are
6 two amounts we're not going to have to pay.

7 THE COURT: Ever? They should come off of the
8 uses then.

9 MR. RINGEL: Well, Your Honor. No, no. If --
10 Churchill's funding the loan. If they funded the whole
11 29,750,000, we would just give that money back to them.
12 They said, instead we'll just go into net fund the loan. So
13 instead of giving you the 29,750,000 we will give you
14 25,535,416 and at the closing we will credit the origination
15 fee and we will credit --

16 THE COURT: I got it.

17 MR. RINGEL: -- the interest reserve, so you will
18 have the interest reserve.

19 THE COURT: Okay. I understand.

20 MR. RINGEL: If you total the whole thing up, it
21 totals \$29,750,000, Your Honor.

22 THE COURT: Okay. Now I understand.

23 MR. RINGEL: Okay?

24 THE COURT: So it's coming --

25 MR. RINGEL: It's net funded.

1 THE COURT: -- it's basically it's a wash.

2 MR. RINGEL: Yes. Yes.

3 THE COURT: The uses and the sources. Okay.

4 MR. RINGEL: And it totals the whole -- it totals
5 the 29,750,000 from Churchill and plus the 250,000. That's
6 the entirety of the monies that are coming in from
7 Churchill.

8 And, Your Honor, if you see at the top, the member
9 equity, the 2 million, the first wire from Mr. Siegel, which
10 I have the confirms for and which are in my account, and the
11 second wire from Mr. Siegel, those total 2,535,786. It's
12 more than what the equity contribution was required from the
13 equity security holders of four million four fifteen. So
14 it's about 122 more than that. It gives us a little bit of
15 room in case -- you know, I know Mr. Rubin will stand up
16 later and say, but there's still interest that's going to
17 run on my claim until it's resolved, because we are going to
18 object to it, so that gives us a little bit of room to deal
19 with things like that.

20 THE COURT: Okay. All right. Let me hear from
21 Mr. Rubin.

22 MR. RUBIN: With regard to the numbers he just
23 went through, I would ask for a clarification that there's
24 not going to be a claim against the estate from Mr.
25 Goldwasser or his entity he's serving as a consultant.

1 That's nowhere --

2 THE COURT: Well, he's never been retained.

3 MR. RUBIN: Never been retained?

4 MR. RINGEL: That's right

5 MR. RUBIN: So --

6 THE COURT: He can make all the claims he wants,

7 Mr. Rubin.

8 MR. RUBIN: Thank you, Your Honor. There are --
9 there were just some logistical issues that don't go to
10 these numbers. I don't know if you want me to address those
11 now?

12 THE COURT: It's your turn.

13 MR. RUBIN: Okay. Thank you, Your Honor. With
14 regard to the actual closing, we have asked Mr. Ringel for
15 at least 48 hours advanced notice, because we were told
16 originally in the plan, they want to closed by the 27th,
17 yesterday he told me they may want to close next week, where
18 they need to coordinate to deal with -- tell real estate
19 counsel to gear up for --

20 THE COURT: I don't think they'll care, as long as
21 you give them enough time to close.

22 MR. RINGEL: Forty-eight hours is fine, Your
23 Honor.

24 THE COURT: All right.

25 MR. RUBIN: Okay. I would also -- I would

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1 appreciate if he's going to tell us what we should expect to
2 be funded from our proof of claim at the closing so we know
3 that those funds have actually -- are being paid. We have
4 filed a proof of claim. I know he's got an issue with
5 regard to what the appropriate interest rate should be on
6 the damage that we have.

7 THE COURT: Yeah, I'll tell you, I don't think
8 you're entitled to interest, though you may not be at all,
9 but that's a different issue.

10 MR. RUBIN: But there are other items to it, Your
11 Honor, that we would want to know what actually are being
12 funded, just --

13 THE COURT: Well, yeah. I mean, look, you've
14 asserted a claim, whatever it is \$660,000 and they're going
15 to have a reserve for that.

16 MR. RUBIN: Okay.

17 THE COURT: All right?

18 MR. RUBIN: Yes, Your Honor. I believe that there
19 are going to be some aspects of that that are not disputed,
20 that's all I'm asking, so.

21 THE COURT: Well, sometimes the plan says that if
22 there's an objection you don't get anything until everything
23 is resolved, even if there's a one-dollar dispute.

24 MR. RUBIN: Understood.

25 THE COURT: You know, you can try and negotiate

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1 that out and maybe reach a resolution on this dispute.

2 MR. RUBIN: Okay. I did want to clarify with
3 regard to -- is there going to be a briefing schedule with
4 regard to the objection or are we just going to wait for the
5 objection to be filed and we deal with that in due course?

6 MR. RINGEL: Well, Your Honor --

7 THE COURT: It depends what they're objecting to.
8 I mean, putting aside interest, I don't know what you're
9 objecting to. I looked at the proof of claim, and the
10 insurance and the taxes have been prorated, I don't know if
11 there's an attorney's fees issue in this case.

12 MR. RINGEL: Yes, there -- not with Mr. Rubin so
13 much as with prior Cashman and the --

14 THE COURT: Well, does the purchase agreement
15 provide for attorney's fees?

16 MR. RINGEL: Your Honor, the --

17 THE COURT: Or are you saying it's an element of
18 damages?

19 MR. RUBIN: Element of damages, Your Honor.

20 MR. RINGEL: The question is the amount, Your
21 Honor. There's an estimate in there, too, for -- they had
22 \$18,000 of attorney's fees through, I guess, through the
23 date we were here last October 29th.

24 THE COURT: You know --

25 MR. RINGEL: And a \$20,000 estimate going forward,

1 so.

2 THE COURT: -- the big number is the interest --

3 MR. RINGEL: Yes, Your Honor.

4 THE COURT: -- because it's \$500,000. And I have
5 to tell you, I wasn't being glib when I said I'm not sure
6 you're entitled to any interest. I'm certainly sure you're
7 not entitled to your lost opportunity costs of 12 percent,
8 which is what you're asserting. I mean, if you want to
9 survey the issue, you can look at the Fifth Circuit's case
10 in Ultra Petroleum, which at the end of the decision deals
11 with the three possibilities, basically: that you're not
12 entitled to any interest, that you're entitled to interest
13 at the federal judgment rate, or that you're entitled to
14 interest at some equitable rate that the Court will fix.

15 There's case law in this district which says
16 you're not entitled to lost opportunity costs. So -- and
17 I'm not ruling on this now, but -- I think it's Forrest
18 Hills Associates, or something like that, it was a Judge
19 Lifland decision. What I'm saying is there's enough of a
20 cushion here. My sense is there's enough of a cushion to
21 satisfy your claim once the issues are resolved.

22 And if you can resolve the interest rate, I think
23 the other issues will go away because they're really -- I
24 mean, it's money and it's their money and it's your money, I
25 understand that, but they're not the big issues in the case,

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1 and I think you're probably entitled to the prorated portion
2 of the real estate taxes and that kind of stuff.

3 MR. RUBIN: Okay.

4 THE COURT: Okay?

5 MR. RUBIN: With regard to the confirmation order,
6 Mr. Ringel and I have been trying to work together to get
7 language that's mutually agreeable. And I think there was
8 an issue that we discussed before court and I think we're
9 resolved on that issue.

10 THE COURT: Okay.

11 MR. RUBIN: So I just want to make sure that we're
12 going to work together so that we can get to -- I don't want
13 to hold anything up, we want to get our money as quickly as
14 possible.

15 THE COURT: No, I understand that.

16 MR. RUBIN: So we just want to have --

17 THE COURT: And, you know, the faster this case
18 gets out of this court everybody saves money --

19 MR. RUBIN: Right.

20 THE COURT: -- because it's expensive to be here
21 for everyone.

22 MR. RUBIN: Right. So we just want to work
23 together on a consensual confirmation order to work out that
24 last paragraph with the language there that we discussed in
25 the hallway this morning. And I believe that's it, Your

1 Honor. Thank you.

2 THE COURT: Do you have -- well, do you have any
3 other objections to confirmation? I mean, this is a very
4 straightforward case.

5 MR. RUBIN: I think this resolves --

6 THE COURT: All of the elements of 1129(a) are
7 solved, the only issue I had was feasibility really.

8 MR. RUBIN: Right. And assuming the money
9 (indiscernible) --

10 THE COURT: You know, either they're going to cut
11 you a check or they're not going to cut you a check by next
12 week. So --

13 MR. RUBIN: Right. Money shows up or it doesn't,
14 Your Honor.

15 THE COURT: Right.

16 MR. RUBIN: Thank you.

17 THE COURT: All right. Anything else?

18 MR. RINGEL: No, Your Honor. You know, as long as
19 we can get to the closing, we'll give them 48 hours' notice.
20 And --

21 THE COURT: Okay. What are you going to pay them
22 at the closing? This really goes to Mr. Rubin's question.
23 I mean, at a minimum you've got to pay them the purchase
24 price.

25 MR. RINGEL: There are two issues with that

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1 THE COURT: Don't tell me you're not going to pay
2 them anything at the closing --

3 MR. RINGEL: We're going to pay them --

4 THE COURT: -- because you're objecting to their
5 claim, is what I'm saying.

6 MR. RINGEL: -- let me -- we're going to pay them.

7 We're going to pay them the purchase price of 27 --

8 THE COURT: Four hundred thousand.

9 MR. RINGEL: -- whatever-400,000-dollars.

10 THE COURT: Okay.

11 MR. RINGEL: The only reason I'm saying there are
12 two issues is I'll alert -- and I told Mr. Rubin about this
13 before, there is this settlement agreement that's out there
14 that there are other claimants that say they're entitled to
15 get \$1.2 million out of the settlement proceeds.

16 THE COURT: From the Debtor? From the Debtor?

17 MR. RINGEL: From the seller. And on the original
18 settlement sheet that was submitted, Your Honor, with Ari
19 Tran's declaration, the original settlement sheet from Royal
20 Abstract had a deduction for the 1.2 million because the
21 settlement agreement between the seller and Mr. Russ, among
22 others, who's here today, we provided and went to Mr. Russ
23 in escrow, and that was something that was being deducted.

24 There was also real property transfer taxes that
25 were being deducted. And I know Mr. Rubin takes the

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1 position that he's entitled to the exemption for the real
2 property transfer taxes

3 THE COURT: Under 1146?

4 MR. RINGEL: Under 1146.

5 THE COURT: Well, if you do it under a plan, then
6 what --

7 MR. RINGEL: Well, I know -- I mean, the only
8 concern I have is the title company, who I spoke with, and I
9 told Mr. Rubin that he should speak to them, has some
10 reservations about whether a nondebtor is going to have a
11 problem -- whether the city is going to have a problem with
12 it, because it's a nondebtor that's claiming it. But I told
13 him he should just work to clear that up.

14 THE COURT: Wait a minute. I thought --

15 MR. RINGEL: I thought, you know --

16 THE COURT: -- you know, I see these sales under
17 plans all the time and what's the problem?

18 MR. RINGEL: He told me that --

19 THE COURT: He, being Mr. Rubin?

20 MR. RINGEL: No. He, meaning the person who is
21 the principal at the -- at Royal Abstract --

22 THE COURT: Right.

23 MR. RINGEL: -- told me that when they go to
24 record deeds and the real property transfer tax is not being
25 paid by the Debtor, in connection with a plan, that the city

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1 has given them a problem with recording the deeds because
2 they take the position that it's not in furtherance of the
3 plan.

4 THE COURT: But that's a bankruptcy question.

5 MR. RINGEL: I know, and you know, I just don't
6 want there to be a problem. I suggested he speak to them

7 THE COURT: Well, why don't you just include in
8 the confirmation order a direction that the appropriate
9 filing entity file it without paying for the filing --

10 MR. RINGEL: I --

11 THE COURT: -- without paying the fee?

12 MR. RINGEL: -- Your Honor, I originally had a
13 provision in there dealing with the transfer tax and the
14 mortgage tax, and Your Honor asked me to take it out.

15 THE COURT: Well, the reason I do that --

16 MR. RINGEL: Yeah.

17 THE COURT: -- is I don't really know what the
18 stamp or similar taxes are, so I -- you know, I leave it to
19 the -- I just use the statutory language --

20 MR. RINGEL: So as a practical issue --

21 THE COURT: -- it's not even necessary to put in
22 there. How much would it be? What is it four dollars on a
23 thousand or something?

24 MR. RINGEL: We're talking about real money here.
25 We're talking about, I guess, close to a million dollars for

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1 the transfer tax and the mortgage recording tax is probably
2 close to that too. So we're talking about \$2 million
3 between the two of them.

4 THE COURT: Are you telling me that that's the
5 type of tax that's a stamp or similar tax within 1146?

6 MR. RINGEL: Yes. Yes, Your Honor. We have --
7 you know, I've been doing --

8 THE COURT: Is there any case that's decided that?

9 MR. RINGEL: Jacoby Bender. I mean, remember I
10 used to work at the city, I lost this many times trying to
11 not get it exempted.

12 THE COURT: Jacoby Bender was that --

13 MR. RINGEL: That was for real property transfer
14 tax --

15 THE COURT: -- well, that was that Second Circuit
16 case --

17 MR. RUBIN: Yes. Yes.

18 MR. RINGEL: That is -- that was a case I was
19 involved in, Your Honor, when I was at corporation counsel
20 and then there were three or four others.

21 THE COURT: Why don't you do this, include it in
22 the confirmation order and just provide me with a letter
23 brief citing the case, and I'll go and read the case, okay?

24 MR. RUBIN: Thank you, Your Honor.

25 THE COURT: Does that solve the problem?

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1 MR. RUBIN: I think it does, Your Honor.

2 MR. RINGEL: I don't want to -- I just don't want
3 it to hold up the closing. Yeah.

4 THE COURT: Well, I realize the problem sounds
5 like it's Royal Abstract and not the parties.

6 MR. RINGEL: It's --

7 MR. RUBIN: We have no problem with Royal
8 Abstract, Your Honor. Mr. Ringel suggested, as he said,
9 that I should call them. And we did call them before this
10 hearing and what they told me is they have no problem at all
11 with the transfer tax.

12 MR. RINGEL: Good.

13 MR. RUBIN: And the Jacoby Bender case is the
14 reason why. They may have an issue with the mortgage
15 recording tax (indiscernible), Your Honor.

16 THE COURT: How much is that?

17 MR. RUBIN: What is the mortgage recording tax,
18 Fred?

19 MR. RINGEL: I think it's in the same -- it's
20 roughly in the same amount.

21 MR. RUBIN: Like \$900,000.

22 MR. RUBIN: Yeah, it's about 900,000.

23 MR. RUBIN: That's -- that they may have an issue
24 with. But they don't have an issue with the transfer tax

25 THE COURT: No, no, is there any case that's

1 decided that?

2 MR. RINGEL: I believe so, Your Honor.

3 MR. RUBIN: Amsterdam Avenue Associates was one,
4 for example.

5 MR. RINGEL: Yeah.

6 THE COURT: All right. Well, same point. You
7 know, you can put it in the confirmation order, but provide
8 me with a letter brief or something that explains the issue.

9 MR. RINGEL: Okay.

10 THE COURT: You know, I guess the city could
11 always come back, but --

12 MR. RINGEL: It's --

13 THE COURT: -- just give --

14 MR. RINGEL: -- just really -- it's just a
15 practical issue I'm trying to not have. And putting it in
16 the order -- and I mean, I put it in dozens and dozens of
17 orders, Your Honor, to be honest. And if it's in the order
18 it's not an issue, then they don't question it.

19 THE COURT: Well --

20 MR. RINGEL: Then they don't question it.

21 THE COURT: -- then they come in and they say,
22 well, we didn't have notice and it's not -- it's
23 (indiscernible)

24 MR. RINGEL: Well, they do have notice. We did
25 notice the city.

1 THE COURT: Okay. Fair enough.

2 MR. RINGEL: We did.

3 THE COURT: You can fight that one out down the
4 road, I guess.

5 MR. RINGEL: Yeah.

6 MR. RUBIN: Your Honor, with regard to the only
7 other issue that Mr. Ringel mentioned, I heard him say that
8 they're going to be funding the full amount of the purchase
9 price --

10 THE COURT: Oh, that's what I --

11 MR. RUBIN: -- (indiscernible).

12 THE COURT: -- yeah, let's -- well, you're paying
13 them the purchase price, what else? You're paying them 27.4
14 at the closing. Is that all you have to pay under the
15 contract?

16 MR. RINGEL: Yeah, that's all we have to pay under
17 the contract. I don't know if there's some other
18 adjustments, you know, the title company will take care of
19 that.

20 THE COURT: All right. So they're reserving for
21 the disputed --

22 MR. RINGEL: Whatever the customary adjustments
23 are --

24 MR. RUBIN: So we can --

25 MR. RINGEL: -- but I don't know of anything else.

1 MR. RUBIN: -- we're going to be able to retain
2 the security deposit, or the 100 and receive --

3 THE COURT: Well, that's part of the purchase
4 price. It's --

5 MR. RINGEL: Yeah, that's -- I'm talking about
6 paying it out of the net of the deposit.

7 THE COURT: In other words that's what you would
8 have gotten at the closing.

9 MR. RUBIN: Right.

10 THE COURT: I mean, in terms of this 1.2 million,
11 it sounds to me that -- like that's the seller's problem. I
12 don't know --

13 MR. RUBIN: Exactly, Your Honor.

14 THE COURT: -- what it has to do with the Debtor.

15 MR. RINGEL: No, it's not, it's --

16 MR. RUBIN: The Debtor's not a party to that
17 seller.

18 THE COURT: You got enough -- you had enough
19 problems in this case.

20 MR. RINGEL: I don't want to -- yeah. No.

21 THE COURT: Don't create new ones.

22 MR. RINGEL: I just didn't want it to impede our
23 ability to close, that's all.

24 THE COURT: You know, that's a fight with -- I
25 guess that the seller has.

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1 Anything else?

2 MR. RINGEL: I can't think of anything, Your Honor

3 THE COURT: Anything else?

4 MR. RUBIN: No.

5 THE COURT: All right. Based upon what are
6 essentially the undisputed facts in this case, I'm satisfied
7 that the plan, as modified -- let me start with the
8 disclosure statement.

9 I'm satisfied that the disclosure statement
10 adequately describes the plan and contains adequate
11 information that would permit a hypothetical creditor or
12 investor to make a decision to accept or reject a plan,
13 realizing that there's no voting and there is no acceptance
14 or rejection, everybody's deemed to accept. So I'll approve
15 the disclosure statement on a final basis.

16 With respect to the plan I'm satisfied that the
17 plan meets the criteria of Section 1129(a) and importantly,
18 that the plan is feasible based upon the representations of
19 counsel. So I will confirm the case.

20 You can submit a confirmation order. Run it past
21 Mr. Rubin. It should include the language we talked about,
22 and some authority for it as a stamp or similar tax, and
23 I'll read it. Okay?

24 MR. RINGEL: Okay. Thank you, Your Honor.

25 MR. RUBIN: Can I just make one suggestion?

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1 THE COURT: Sure

2 MR. RUBIN: That the submission to the Court
3 include a representation they have received this large chunk
4 of money.

5 THE COURT: Yes.

6 MR. RINGEL: Oh, yeah. Yeah, yeah.

7 MR. RUBIN: Thank you, Your Honor.

8 THE COURT: As a matter of fact, what you should
9 do is you should include a finding in the confirmation order
10 that you have X amount of dollars, and provide a
11 declaration, along with the proposed confirmation order from
12 you, certifying that the money's in your account. Okay?

13 MR. RINGEL: Not a problem.

14 THE COURT: And that should satisfy that issue.

15 MR. RINGEL: Your Honor, the only --

16 THE COURT: Now, with respect to the objection to
17 the -- have you filed an objection to the claim?

18 MR. RINGEL: I have not filed an objection to the
19 claim.

20 THE COURT: All right. I really think you should
21 work this out. You're going to wind up spending more money
22 litigating this issue. As I said, I think you're entitled
23 to the pro rata share of the real estate taxes and the
24 insurance, you're not entitled to 12 percent interest,
25 that's a lost opportunity cost the way it's been presented,

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1 you're just not entitled to that under 1124. You know, the
2 attorney fees are whatever they are, but you're probably
3 entitled to some attorney's fees as an element of damages

4 MR. RINGEL: Yeah. Your Honor, I mean, I don't
5 want to --

6 THE COURT: You're going to spend a million
7 dollars fighting over \$30,000.

8 MR. RINGEL: No, and I know Mr. Rubin too well to
9 play a hidden ball trick with him. We were going to contest
10 the interest completely and --

11 THE COURT: Well, that's --

12 MR. RINGEL: -- we'll work out the attorney's fees
13 with him.

14 THE COURT: -- a legal -- in large part that's
15 initially a legal issue.

16 MR. RINGEL: Yes. I know.

17 THE COURT: And I probably have a lot of
18 discretion on that. Okay?

19 MR. RUBIN: We'll talk. Thank you, Your Honor.

20 THE COURT: All right. Otherwise if it's not
21 moving fast enough, Mr. Rubin, you're not getting anywhere,
22 just make an application to compel payment, you know, to
23 enforce the plan and compel payment.

24 MR. RUBIN: Okay. Thank you.

25 THE COURT: And we'll deal with it in that

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1 context. It's still the same issue, but this way you don't
2 lose control of the way it moves along.

3 MR. RINGEL: Your Honor, well, the intention is to
4 spend, you know, some time in the next week or so trying to
5 work it out. And if we can't, we'll file an objection.
6 We're not -- we don't want to wait either, because we're,
7 theoretically, losing interest on it, too, Your Honor.

8 The only thing, Your Honor, is, you know, we'll
9 submit that letter brief as soon as we can. I assume you'll
10 do it, too. Because we both have an interest in getting
11 this confirmation order --

12 THE COURT: Just tell me the cases to read, I
13 don't need argument. Just tell me the cases you want me to
14 read, and I'll read them

15 MR. RINGEL: Okay. Thank you, Your Honor.

16 THE COURT: All right?

17 MR. RUBIN: Thank you.

18 THE COURT: Thanks.

19 MR. RINGEL: Thanks.

20 THE COURT: Oh, let me give you a post-
21 confirmation status conference date. If you resolve this
22 one objection this case should be out of here pretty soon.
23 And you don't want to keep --

24 MR. RINGEL: Yeah, I'm going to file a final fee
25 app next month and --

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1 THE COURT: You don't want to keep paying the U.S.
2 Trustee, I'm sure.

3 MR. RINGEL: No. I hate that I have to pay the
4 250. Well, not me, my client.

5 THE COURT: Let's see. Let's say January 14.
6 Okay?

7 MR. RINGEL: That's -- yeah, that's fine, Your
8 Honor. Thank you, again.

9 THE COURT: Thank you. Good luck.

10 (Whereupon these proceedings were concluded at
11 10:52 AM)

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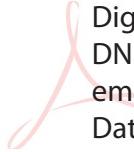
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1 C E R T I F I C A T I O N

2

3 I, Sonya Ledanski Hyde, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

5 **Sonya Ledanski
6 Hyde**



Digitally signed by Sonya Ledanski Hyde
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25 Date: November 25, 2019

[& - attorney's]

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